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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,611	03/24/2004	Dennis West	NUTO:001	3658

7590 09/30/2005

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EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/807,611

Applicant(s)

WEST, DENNIS

Examiner

Philip H. Leung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 10, 11, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Luraschi (FR 2 814 445) (previously cited).

Luraschi shows a system and method for providing fresh potatoes for consumption, comprising: a container (1) of suitable construction to be placed in and withstand a cooking environment capable of cooking fresh potatoes; and one or more fresh potatoes (3) placed within said container. In regard to claims 2 and 17, the container is constructed from microwaveable plastic and includes a tray (1) and a cover (film layer 2) (see Figures 1-4, the title and the English abstract). In regard to claims 10 and 11, these are product-by-process claims because the claimed limitation “are cleaned (three times) prior to being placed within the container” does not add any structural limitation to the claim (see M.P.E.P. 2113).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 3, 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being obvious over Luraschi (FR 2 814 445), in view of Fritz (US 5,607,709) (previously cited).

Luraschi shows every feature as except for the explicit showing of inclusion of cooking instructions with the system. However, it is routine in the art of food packages to include cooking instructions with the package to help the consumer to heat the food. Anyway, Fritz shows a microwave cooking container with a lid and a portion 32 containing cooking instructions (see Figures 1-4 and col. 3, lines 13-16). It would have been obvious to an ordinary skill in the art at the time of invention to modify Luraschi to provide cooking instructions to assist the consumer with the cooking process, such as the length of cooking times as set forth in the abstract, so that the consumer can obtain optimal cooking result, in view of the teaching of Fritz.

5. Claims 5-15 and 20-30 are rejected under 35 U.S.C. 103(a) as being obvious over Luraschi (FR 2 814 445), in view of Pickard et al (US 5,220,909) (previously cited).

Luraschi shows every feature as except for the inclusion of cooking ingredients and eating utensils with the system. Pickard shows a food heating meal system with a package containing food portions, food condiment package 43 and eating utensils 45 (see Figure 1 and col. 4, lines 34-50). It would have been obvious to an ordinary skill in the art at the time of invention to modify Luraschi to include a potato composition and eating utensils in a same package so that the consumer can bring the package along and consume it as a meal for better tasty potatoes and conveniences, in view of the teaching of Pickard. In regard to claims 11 and 26, the number of cleaning times would be a matter of engineering tradeoff between cost and

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cleanliness. In regard to claims 6 and 21, the use of butter, margarine or dressing for serving with potatoes is well known.

6. Applicant's arguments filed 7-21-2005 have been fully considered but they are not persuasive. The claimed invention is clearly shown by Luraschi as set forth above. The argument that the potatoes in Luraschi are not "fresh" as claimed is not well taken. Although the potatoes have been chemically treated, they are still "fresh" as they are not stale, not spoiled, not cooked and not decayed – [and that is a definition of "fresh" (Webster's New Collegiate Dictionary)]. Moreover, the apparent purpose of the chemical treatment in Luraschi is to prevent the potatoes from becoming rotten or stale, that is, to keep them in a fresh state for a longer period. Most importantly, microwave cooking of fresh whole potatoes in a container is a common practice in an average household having a microwave oven. For instance, the Examiner has been doing this at home for years.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 472-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Philip H Leung". The signature is fluid and cursive, with a large initial "P" and "L".

Philip H Leung  
Primary Examiner  
Art Unit 3742

P.Leung/pl  
9-27-2005